HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE

AND

HON'BLE SHRI JUSTICE G.BHAVANI PRASAD

WRIT APPEAL No. 281 of 2006

Between:

Routhu Chandrasekharam

and others .. Appellants

AND

The District Collector,

Srikakulam and another ..Respondents

Counsel for the Appellants: Shri K.Purushotham

Counsel for the Respondent: Govt. Pleader for Land Acquisition

Dated: March 20, 2006

JUDGMENT:

Per G.S.Singhvi, C.J.

This appeal is directed against order dated January 23, 2006 passed by the learned Single Judge, whereby he dismissed the writ petition filed by the appellant questioning the acquisition of land admeasuring Ac.3-26 cents comprised in

Sy.No.271/2 Ac.0-54 cents, Sy.No. 271/3 Ac.0-02 cents, Sy.No.271/4 Ac. 0-16 cents, Sy.No.272/1 Ac.0-06 cents and Sy.No.272/2 Ac.2-48 cents situated at Vadama village, Palakonda Mandal, Srikakulam District.

A perusal of the record shows that the counsel for the appellant did not appear on the date of hearing and the learned Single Judge, after taking cognisance of the averments contained in the counter-affidavit filed by District Collector, Srikakulam (respondent No.1) that the writ petitioners did not participate in the enquiry held under Section 5A of the Land Acquisition Act, 1894 (for short 'the Act') and possession of the land had been taken over and plots were allotted to the beneficiaries even before filing of the writ petition dismissed the same.

We have heard Sri K.Purushotham, learned advocate for the appellant and the learned Government Pleader for Land Acquisition and have gone through the records.

In the affidavit filed by appellant No.2 – Routhu Rajamohan Rao in support of the writ petition, it was averred that the land in question was purchased by the father of the petitioners from joint family funds; that the same had been partitioned during his life time and that they had been individually enjoying their shares measuring Ac.0.81 cents each by engaging coolies etc. It was further averred that their names were not mentioned in notification dated 20.11.1995 issued under Section 4 (1) of the Land Acquisition Act, 1894 (for short 'the Act') and on that account they did not get opportunity to participate in the enquiry held under Section 5A of the Act. It was further averred that the notifications for acquisition of land had not been published in accordance with the mandate of Sections 4(1) and 6 of the Act.

In the counter-affidavit filed by Dr. K.S.Jawahar Reddy who was then holding the post of District Collector, Srikakulam, it was averred that notification issued under Section 4 (1) was duly published as per the requirement of law and notice of acquisition was served on the land owner Smt Bramaramba. It was further averred that despite due notice, the land owner did not participate in the enquiry held under Section 5A of the Act. In paragraphs 2 to 11 of his affidavit, Dr. K.S. Jawahar Reddy averred as under:-

> "2. The brief facts are that the Mandal Revenue Officer, Palakonda has sent proposals for acquisition of Ac.12.88 cents of lands in Vadama village of Palakonda Mandal for provision of house sites to weaker

sections. The acquisition proceedings were initiated and the notification u/s. 4 (1) of the Land Acquisition Act were approved by the Collector, Srikakulam in proceedings Rc.No.1583/95 SWLA, dt. 20.11.1995 and it was got published in the manner prescribed under the provisions of Land Acquisition Act and the publication details are as follows:-

1. In the Gazette No.66, Dt.22.11.1995.
2. In the daily news paper (Samacharam dt.24.11.95)
3. In the daily news (Eenadu dt.25.11.1995)
4. In the Locality dt.4.12.1995.

3. The last date of publication of 4(1) Notification is on 4.12.1995. Enquiry under Section 5A of the Land Acquisition Act was conducted on 5-2-1996 and after verification and finalization of objections, the draft declaration proposals under Section 6 of the Act have been approved by the Collector (SW) Srikakulam in his proceedings Rc.No.1583/95 SWLA, dt.15.4.1996 and the details of its publication are as shown below:

1. In the Gazette No.44, dt.17.4.1996.

2. In the Telugu daily news paper (Prajasakti),

dt.18.4.1996.

3. In the Telugu daily news paper (Samacharam)

dt.18.4.1996.

5. In the locality dt.26.4.1996.

Last date of publication approved declaration u/s. 6 is 26.4.1996.

4. The statutory notices u/s.9(1) and 10 and 9(3) and 10 have been published in public places and served on the individual in the acquired lands in the manner as prescribed in the Land Acquisition Act, fixing the Award enquiry on 27.5.1996. Since the acquisition is found inevitable, possession of lands under acquisition was taken on 2.6.1996. The draft Award was approved by the Collector (SW), Srikakulam in his proceedings Rc.No.1583/95SWLA, dt.20.7.1996 and the Award was passed on 27.7.1996 in Award No.14/96. 12(2) notices were also issued to the awardees concerned on 27.7.1996 i.e., on the date of Award itself to attend before the Land Acquisition Officer to receive the Land Acquisition compensation. Some of the awardees have received the Land Acquisition compensation.

5. While so, Sri Routhu Chandra Sekharam and others approached the High Court and filed a writ petition challenging the Land Acquisition

proceedings. The High Court in its orders in W.P.No.17151/96, dt.21.3.1996 has ordered that if the petitioners are in possession, their possession shall not be disturbed. But the lands belonging to the writ petitioners along with the other lands covered by Award No.14/96 dt.27.7.1996 were taken advance possession on 2.6.1996. Since the lands under dispute were already taken possession on 2.6.1996 and the Hon'ble High Court decision was ordered on 21.8.1996 i.e., after two months 19 days from the date of taking advance possession and hence the High Court orders are infructuous.

6. In reply to paras 2 and 3, it is to submit that the contention of the writ petitioners is that the said lands under acquisition are double crop wet lands under Vadama Distributory. But according to the Revenue accounts, these lands are classified as dry. These lands are registered in the name of Smt.Routhu Bramaramba, the mother of the writ petitioners in the village accounts. It is not known whether the writ petitioners have executed any partition deed either registered or unregistered among them. After demise of Routhu Venkata Ramanamurthy the father of the writ petitioners, these lands are inherited to Smt. Routhu Bramaramba, the mother of the writ petitioners under whom the lands are in possession and her name was published in notification u/s.4(1) and D.D. u/s.6 rcognising her as land owner and the names of the writ petitioners were not published.

The 4(1) notification was published as detailed below:

1. In the Gazette No.66 dt.22.11.1995.
2. In the daily news paper Samacharam dt.24.11.1996.
3. In the daily news paper Eenadu dt.25.11.1995.
4. In the locality dt.4.12.1995.

7. After publication of notification u/s.4(1) of the Collector, Srikakulam has issued orders in Rc.No.1983/95 D2, dt.2.12.1995 to conduct enquiry u/s.5A.

8. Accordingly enquiry was conducted on 29.1.1996 and 5.2.1996 on which date Smt.Routhu Bramaramba has filed a representation stating that the lands covered by writ petition are under her possession and enjoyment. Thus, it is clear that the said lands are under her possession and not mentioned anything about the apportionment of the said lands among her sons. All the writ petitioners are employees working ata various places as stated below:

1. Routhu Chandrasekharam Rao, S/o.R.V.Ramana Rao,

employee in Railways.

2. Sri Roughu Rajamohana Rao,

Employee in Syndicate

S/o.R.V.Ramana Rao. Bank.

3. Sri Routhu Krishnamohan,

Railway Department. S/o.R.V.Ramana Rao.

4. Sri Routhu Madhusudan Rao, Railway Department.

S/o.R.V.Ramana Rao.

9. In addition to the land proposed for acquisition, they are having Ac.1.51 wet covered by S.No.264/2 land in Vadama village. Further, all of them are financially sound.

10. The contention of writ petitioners that they are the owners of the lands covered by S.No.271-2, 3, 4, 272-1, 2 is not correct as the names of the writ petitioners did not appear in any of the village accounts. These lands are registered in the names of Smt.Routhu Bramaramba i.e., the mother of the writ petitioners.

11. The contention of the writ petitioners that their names were not mentioned in the 4(1) notification dt.25.11.1995, in the Gazette or in subsequent notices is also not correct as the lands covered by S.No.271, 2, 3, 4 and 271-1, 2 stand registered in the Revenue records in the name of Routhu Bramaramba i.e., the mother of the petitioners. During inspection of lands and while sub-dividing the lands on ground, only Smt. Routhu Bramaramba who represented herself did never inform the names of the writ petitioners as co-owners of the lands under acquisition. Hence, the name of Routhu Bramaramba was shown in the notification. The Revenue Divisional Officer is authorised by the Dist. Collector, Srikakulam to perform and exercise the powers and duties of the Dist. Collector in Rc.No.1583/95, SWLA, dt.20.11.1995 and as such the Revenue Divisional Officer, Palakonda has got jurisdiction to acquire the lands required for a public purpose."

It appears from the record that the petitioners (appellants herein) did not file replication/rejoinder to controvert the averments contained in the affidavit filed by respondent No.1 and by relying on the averments contained in that affidavit, the learned Single Judge dismissed the writ petition.

Sri K.Purushotham, learned counsel for the appellants argued that the order passed by the learned Single Judge should be set aside because it is devoid of reasons. He submitted that the appellants had produced sufficient material on the record of the writ petition to show that the land in question had been partitioned and each of the appellant had got separate share and that without issuing notice and giving opportunity of hearing to them, the respondents had deprived them of their valuable right to property. Sri K.Purushotham invited our attention to the copies of pattas issued in favour of his clients to show that the same were duly signed by various authorities including the Revenue Divisional Officer and argued that the learned Single Judge ought to have quashed the acquisition proceedings on the ground of violation of the mandate of Sections 4(1) and 5A of the Act because the appellants were not given opportunity of hearing. Learned counsel submitted that even though no documentary evidence was produced by the petitioners (appellants herein) in support of their claim of partition of land, the factum of issuance of pattas was sufficient to entitle them notice under Section 5A of the Act.

Learned Government Pleader supported the order of the learned Single Judge and argued that the appellants' challenge to the acquisition of the land in question was rightly negatived because declaration under Section 6 was issued after following the procedure prescribed under Sections 4(1) and 5-A of the Act. Learned Government Pleader pointed out that the name of the land owner namely, Smt.Routhu Bramaramba was included in the schedule appended to notification dated 20.11.1995 which was duly published in Gazette No.66 dated November 22, 1995 and two daily newspapers, namely, Samacharam dated November 24, 1995 and Eenadu dated November 25, 1995 and in the locality on December 4, 1995.

We have given serious thought to the respective arguments. In our opinion, even though the order under challenge does not contain detailed reasons for dismissal of the writ petition filed by the appellants, we do not consider it proper to set aside the same because we do not find any merit in the appellants' challenge to the acquisition of the land in question.

Although, in the affidavit filed by appellant No.2, it was averred that the land in question had been purchased by his father from joint family funds and the same had

been partitioned during his life time, but the appellants did not produce copies of the sale deed and partition deed. Therefore, it is not possible to nullify the acquisition proceedings by presuming that non-inclusion of their name in the schedule appended to notification dated 20.11.2005 was intentional. The appellants also failed to produce any evidence before the learned Single Judge to show that their names had been entered in the revenue records showing them as owners of the land. Therefore, acquisition of the land cannot be annulled on the ground of violation of the provisions of Sections 4(1) and 5A of the Act.

A reading of notification dated 20.11.1995 and the averments contained in the affidavit of Dr. K.S.Jawahar Reddy shows that the name of Smt. Routhu Bramaramba, who was recorded as land owner was included in the schedule and she was given opportunity to participate in the enquiry held by the Land Acquisition Officer – Revenue Divisional Officer under Section 5A of the Act. It is a different thing that she did not participate in the enquiry. Thus, there is no valid ground to entertain the appellants challenge to the acquisition proceedings or the order of the learned Single Judge.

There is another reason for our disinclination to entertain the prayer of the appellants. Copies of Pattas, of which English translation has been filed, do not bear any number. Even if we were to ignore the defects in the pattas, it is not possible to entertain the arguments of the learned counsel that issuance of pattas itself was sufficient to prove that names of the appellants have been recorded as the land owners. In our opinion, for substantiating their claim that their names had been entered in the revenue records as owners of the land, the appellants should have produced the relevant documents and their failure to do so is sufficient to negate their challenge to the acquisition proceedings.

No other point has been argued.

For the reasons mentioned above, we hold that the order under challenge does not suffer from any patent legal infirmity and the appeal is liable to be dismissed. Ordered accordingly.

As a sequel to the dismissal of the appeal, WAMP.No.595 of 2006 filed by the appellants for grant of stay is also dismissed.

G.S.SINGHVI, C.J.

March 20, 2006

G.BHAVANI PRASAD, J.

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